ZAINUDDIN MAHMUD A

v.

PP

HIGH COURT MALAYA, KANGAR B
ZAMANI RAHIM JC
[CRIMINAL APPEAL NO: 41A-01-08]
16 JULY 2009

CRIMINAL LAW: *Penal Code - Section 506 - Criminal intimidation - Threatening to stab victim with knife - Whether possessed necessary intent to cause alarm - Prima facie case - Whether established - Whether defense cast reasonable doubt on prosecution case - Penal Code, s. 503* C

The accused, a former policeman, was indicted with an offence of criminal intimidation under s. 506 of the Penal Code. The accused defence was called. At the end of the trial, he was found guilty, convicted and sentenced to a fine of RM7,000 and in default six months imprisonment. Dissatisfied with the conviction and sentence, the accused appealed to this court. The facts were that on 13 January 2006, the accused, his first wife (SP2), his daughter (SP5) and his stepdaughter (SP3) were returning home in a car driven by the accused. While traveling, an argument broke between SP2 and the accused as a result of SP2's jealousy that the accused had sped up the car to reach home quickly and thereafter proceed to the house of his second wife (SD2). The argument continued upon reaching home. The accused slapped SP2 on the left side of her face and as a result SP2 fell down and a grappled ensued. The accused then grabbed the knife from the top of an aquarium and threatened to stab SP2. On seeing this, SP5 came to her mother's rescue. Thereafter, the accused had presumably cooled down, put back the knife in its sheath and went to the bathroom. SP2 and her daughters snuck out from the house and went to Kangar Police Station where she lodged a police report. The issues that arose were (i) whether the accused possessed all the necessary intent to cause alarm to SP2; (ii) whether there was a conflict in the evidence of SP2 as regard the weapon used by the accused; (iii) whether the magistrate had failed to consider the evidence which were favourable to the accused. D E F G H I

A **Held:**

(1) The essential ingredients of the offence of criminal intimidation under s. 503 to be proved by the prosecution are threatening another (the complainant) with any injury to his (her) person
B (first ingredient) and intent to cause alarm to that person (the complainant) (second ingredient). The magistrate had correctly found, based on the evidence before him, that the accused possessed all the necessary intent to cause alarm to SP2. The evidence of SP2 was sufficiently corroborated by the evidence
C of SP5 and SP3. The magistrate had therefore come to a correct decision that a *prima facie* case had been made out and called upon the accused to enter his defence as the prosecution had established all the essential elements of the offence under s. 506. (paras 10 & 14)

D **(2)** The knife and its sheath were produced at the trial marked P6A and P6B respectively. It was apparent that the knife, P6A, matched some of the descriptions given by prosecution witnesses, SP2, SP3 and SP5. Though in her testimony SP2
E referred to the weapon as knife and in her police report as parang, whereas SP5 and SP3 in their testimonies referred to it as knife, it did not detract from the fact that the weapon was P6A. Ultimately, SP2, SP3 and SP5 positively identified P6A as being the weapon used by the accused to threaten
F SP2. Therefore, to some people, P6A, was called interchangeably as parang or knife and to some others, it was called a knife. Assuming that the weapon was not recovered, it did not *ipso facto* detract from the finding of fact that the accused was wielding a weapon at close range and using it to
G threaten SP2. The contention on the issue of parang or knife had no merit. (paras 23 & 24)

(3) The defence had not cast any reasonable doubt on the truth of the prosecution case. Therefore, the prosecution case remained strong and the prosecution had successfully proved
H its case beyond a reasonable doubt. The magistrate had seen the prosecution witnesses while giving evidence. He found their evidence to be credible. They were witnesses of truth. The prosecution case was overwhelmingly strong and there was no evidence of bad faith or conspiracy among SP2, SP3
I and SP5 to make false accusation against the accused. With the finding of facts based on credibility of witnesses, the

appellate court should be slow to interfere with such findings unless the findings were clearly wrong, which was not in this case. (paras 27 & 29)

(4) The magistrate's decision should not be disturbed as he did not transgress any established legal principles and guidelines which warranted any intervention, both on conviction and sentence. The fine of RM7,000 in default six months imprisonment imposed by the magistrate was confirmed. (para 34)

[Order accordingly.]

Case(s) referred to:
Ah Mee v. PP [1967] 1 LNS 3 FC ***(refd)***
Aparav Sathiah v. PP [1997] 2 CLJ Supp 391 HC ***(refd)***
Bhandulananda Jayatilake v. PP [1981] 1 LNS 139 FC ***(refd)***
China Airlines Ltd v. Maltran Air Corporation Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***
Lee Yoke Choong v. PP [1964] 1 LNS 82 HC ***(refd)***
PP v. Lee Eng Kooi [1993] 2 CLJ 534 HC ***(refd)***
Tan Ah Kow v. PP [1996] 3 CLJ 463 HC ***(refd)***
The People's Insurance Company (Malaysia) Bhd v. Ting Tiew Kiong [2007] 5 CLJ 225 CA ***(refd)***
Tng Tien Chai & Anor v. PP [1995] 3 CLJ 292 HC ***(refd)***
Sebastiano Robert Pavone v. PP [1985] 2 CLJ 91; [1985] CLJ (Rep) 753 HC ***(refd)***
Sinnasamy Kaliappan v. PP [2005] 1 LNS 293 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 107
Evidence Act 1950, ss. 91, 92
Penal Code, ss. 503, 506

For the appellant - Zuhair Ahmad Zakuan; M/s Jamil Mohmed Shafie & Assoc
For the respondent - Azman Abu Hassan DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Zamani Rahim JC:

[1] The accused, a former policeman, was indicted with an offence of criminal intimidation under s. 506 of the Penal Code, which read as follows:

A Bahawa kamu pada 13.11.2006 antara jam lebih kurang 1.00 pagi bertempat di dalam sebuah rumah No. 64, Perumahan Polis Seriab, Kangar, di dalam Daerah Kangar, di dalam Negeri Perlis, telah melakukan ugutan jenayah kepada seorang bernama Siti Norfarahin binti Abdullah, No. Passport: J3351346 dan
B mengacukan sebilah pisau kepadanya dengan niat hendak menyebabkan ketakutan yang mendatangkan kecederaan atau kematian kepadanya. Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 506 Kanun Keseksaan.

C **[2]** The accused's defence was called. At the end of the trial, he was found guilty, convicted and sentenced to a fine of RM7,000 and in default six months imprisonment. The fine was paid.

D **[3]** Dissatisfied with the conviction and sentence, the accused appealed to this court.

[4] The prosecution case is as follows. The accused was a policeman. He had since left the service. He had two wives. His first wife was Siti Norfarahin binti Abdullah, SP2. And his second
E wife is Siti Norasikin binti Ali, SD2. The accused has two daughters - his own daughter, Siti Shairatul Shima binti Zainuddin SP5 and a step daughter, Siti Hazierah binti Abdullah, SP3.

[5] The accused, his first wife, SP2, and the two daughters,
F SP3 and SP5 lived at No. 64, Perumahan Polis Seriab, Kangar. SP2 operated a food stall at Kuala Perils.

[6] On 13 January 2006, at about 1am, SP2, SP3 and SP5 were returning home in a car driven by the accused, after having
G completed the days work at their food stall at Kuala Perlis. While travelling, an argument broke between SP2 and the accused. As always in the case of polygamous marriage, the argument was a result of SP2's jealousy. SP2 was jealous as the accused had sped up the car to reach home quickly and thereafter to proceed to his
H second wife's house.

[7] The argument continued upon reaching home. In anger the accused kicked SP3 but missed her. SP3 went to the kitchen. The accused then directed his anger to SP2. He slapped her once on the left side of the face. She suffered soft tissue injury (see the
I medical report, P10). As a result of the slap, SP2 fell down and a grapple ensued. The accused then grabbed a knife from the top

of an aquarium and threatened to stab SP2. On seeing this, SP5 came to her mother's rescue. SP5 rushed to stand in between the accused and SP2. SP5 was shielding SP2. SP5 pushed SP2 backward to avert an untoward incident from happening. Thereafter, the accused had presumably cooled down and he put back the knife in its sheath and went to the bathroom.

[8] When the accused was temporarily out of sight, SP2 and her daughters sneaked out from the house and went to Kangar police station where she lodged a police report *vide* Kangar Report No. 902/06. In the course of police investigation, the accused surrendered the knife, PSA together with its sheath, P6B to the investigating officer, Insp Roshaya binti Mat Isa, SP6. In the course of investigation, a copy of the photograph showing P6A and P6B was taken. It was marked as P2 (see p. 147 of Appeal Record).

[9] As stated at the beginning of this judgment, the accused was charged with an offence of criminal intimidation under s. 506 of the Penal Code. Criminal intimidation is defined in s. 503 as follows:

> Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

[10] The essential ingredients of the offence of criminal intimidation under s. 503 to be proved by the prosecution are:

1) Threatening another (the complainant) with any injury to his (her) person (first ingredient), and

2) Intent to cause alarm to that person (the complainant) (second ingredient)

See *Sinnasamy Kaliappan v. PP* [2005] 1 LNS 293.

[11] The first ingredient was adduced through the direct oral evidence of the complainant, SP2. She said in the altercation the accused had slapped her. She retaliated. The accused then grabbed a rambo-typed knife to stab her. Her daughter, SP5 came to intercept by standing in between the accused and SP2. The evidence of SP2 was corroborated by SP5's evidence. In cross

examination, both SP2 and SP5 denied to the counsel's suggestion that the accused had never threatened SP2 with a parang or knife. In other words, their evidence that the accused had threatened SP2 was never shaken.

[12] As regard the second ingredient, the learned counsel submitted that SP2 was not frightened or she was not placed in a state of fear by the accused. Though SP5 was frightened and shocked, her feeling could not be exported or imputed to SP2. As the prosecution had failed to prove this ingredient, the learned counsel contended that the learned magistrate was therefore in error to conclude that the prosecution had successfully made out a *prima facie* case against the accused. The learned counsel appeared to have emphasized on the feeling or effect on SP2, instead the intent of the accused to cause alarm. In *Lee Yoke Choon v. PP* [1964] 1 LNS 82, among the mitigating factors put forward, *inter alia*, that the complainant was not in fact frightened and the accused never threatened to carry out the threat personally. To this, Ong J said:

> I consider all these grounds are beside the point. The offence of criminal intimidation lies in the intent behind a threat, not its effect.

[13] In the case of *Sinnasamy Kaliappan*, *supra*, in an appeal by the accused against the decision of the learned magistrate who had found him guilty and convicted with an offence under s. 506, Low Hop Bing J had this to say:

> The second ingredient ie, the accused's intent by its very nature cannot be proved by direct evidence but may be inferred from all the circumstances of the case. In the instant appeal, it is clear to me that the learned Magistrate has made the correct inference that the accused had the necessary intent to cause alarm to the complainant.

[14] In the instant case, I am satisfied that the learned magistrate had correctly found, based on the evidence before him, that the accused possessed all the necessary intent to cause alarm to SP2. The evidence of SP2 was sufficiently corroborated by the evidence of SP5 and SP3. The learned magistrate had therefore come to a correct decision that a *prima facie* case had been made out and called upon the accused to enter his defence as the prosecution had established all the essential elements of the offence under s. 506.

[15] The learned counsel also submitted that there was a violent conflict in the evidence of SP2 as regard the weapon used by the accused. This appeared to be the defence's strong point. In her testimony in court, SP2 said it was a knife, whilst in his police report, P3 and the medical report, P10, both stated the weapon was a parang. Citing the Federal Court case of *Ah Mee v. PP* [1967] 1 LNS 3 the learned counsel argued in his written submission dated 22 April 2009 and repeated in his reply dated 22 June 2009 as follows.

> Oleh yang demikian, dalam kes ini laporan SP2 iaitu P3 dan dalam Lapuran Perubatan P10, telah dicatit perkataan 'parang' bukan 'pisau'. Ini menunjukkan SP2 telah membuat satu laporan palsu dan tomahan palsu kepada Doktor yang Perayu telah ugut SP2 dengan sebilah parang. Parang disebut dalam dokumen yang telah dimasukkan sebagai P3 dan P10, dan kedua-duanya adalah keterangan bertulis yang tidak boleh ditukar kandungan keterangan dokumentari dengan keterangan lisan. Maka keterangan SP2 telah di 'contradict' oleh P10 dan juga oleh P3, jadi terdapat satu 'violent conflict of evidence'.

[16] The learned counsel's contention that "SP2 telah membuat satu lapuran palsu dan tomahan palsu kepada doktor" is misconceived. There was no evidence of falsity of any sort. There was no evidence that SP2 had made false allegations (tohmahan palsu) against the doctor. What the learned counsel meant was presumably the word "parang" stated in the medical report, P10 was narrated to the doctor by SP2 and this was false. He went on to submit that "keterangan SP2 telah di 'contradict' oleh P10 dan juga P3, jadi terdapat satu 'violent conflict of evidence' is another wrong statement of the law within the principle propounded by Ong Hock Thye FJ in *Ah Mee*'s case, *supra* which formed the basis of the learned counsel's argument.

[17] As I understand it, a police report contains information relating to the commission of an offence which is required under s. 107 of the Criminal Procedure Code to be reduced to the form of a document: see s. 91 of the Evidence Act. And by virtue of s. 92 of the same Act, no parole evidence may be admitted seeking to contradict or vary any written statement contained in the document under s. 91. In *Ah Mee*'s case, *supra*, among the grounds of setting aside the appellant's conviction, the trial court had admitted material evidence which was inadmissible. The complainant in a rape case clearly gave the appellant's car number as M 7354 in her police report. But the actual number of the

A appellant's car was M 6049. That the registration number M 7354 belonged to a motorized grass-cutter, which had ceased to exist since 1957. The trial judge had admitted the complainant's explanation that it was an honest mistake, that is, the complainant was uncertain when she was asked by the police to give the
B number of the vehicle involved. Ong Hock Thye FJ who delivered the judgment said that s. 91 and s. 92 were equally applicable, not only to the civil proceedings but also to the criminal proceedings. His Lordship said:

C > Section 91 of the Evidence Ordinance applies equally to criminal trials, no less than to civil proceedings, and it categorically state that "in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms ... of such matter except the document itself. The report was information relating to the commission of an
D > offence which "shall be reduced to writing" pursuant to section 107 of the Criminal Procedure Code (Cap. 6) and Section 92 of the Evidence Ordinance goes on to exclude all parole evidence seeking to contradict or vary what was set out in writing.

E **[18]** The above principle was followed by Edgar Joseph J (as he then was) in *Sebastiano Robert Pavone Pavone v. PP* [1985] 2 CLJ 91; [1985] CLJ (Rep) 753. For a diametrically opposing view, please refer to the judgment of Abdul Kadir bin Musa JC (as he then was) in *Tng Tien Chai & Anor v. PP* [1995] 3 CLJ 292.

F **[19]** The application of s. 91 and s. 92 may be exemplified in the case of *PP v. Lee Eng Kooi* [1993] 2 CLJ 534. The facts are as follows. In the trial, ASP Sat Pal Jain and Insp Tan Boon Hooi gave evidence that the firearms which formed the subject matter of the charge was found in a bag held by the accused. In the
G police report made immediately after the accused's arrest it showed that the firearm was found in the house occupied by the accused, and not in the bag held by the accused.

[20] Whilst the trial was in progress, the prosecution made an
H application to recall ASP Sat Pal Jain to remedy and explained the discrepancies in his evidence in court and the police report. The prosecution's application as a matter of course was strongly objected by the defence. The defence objection was upheld on the ground, *inter alia*, the police report was a written document within
I s. 91. And s. 92 went on to exclude the admission of parole evidence to vary the contents or terms in the police report.

[21] The application of s. 91 and s. 92 to the medical report may be seen in the case of *Tan Ah Kow v. PP* [1996] 3 CLJ 463.

[22] In this case, the twin provisions of s. 91 and s. 92 of the Evidence Act have no application. There is no violent conflict in evidence of SP2 in respect of the weapon used by the accused. It is a matter of using slightly different names over exactly the same thing. In his oral evidence, SP2 described the knife as follows:

> Pisau itu pisau jenis rambo. Pisau itu agak panjang, lebih panjang dari pembaris yang ada dalam mahkamah. Pisau itu tidak ada warna cuma karat
>
> [p. 19 of Appeal Record]

SP5 described the knife in the following words:

> Pisau diambil di atas akuarium dalam gambar. Pisau itu ada gigi sikit di bahagian atas dan juga berkarat. Panjang pisau itu lebih kurang 2 jengkal
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> [p. 42 of Appeal Record].

SP3 gave the description of the knife as follows:

> Pisau itu macam bergerigi sikit. Pisau itu ada dalam sarung. Panjang agak seperti kertas angkat sumpah ini.
>
> MH: kertas angkat sumpah di dalam mahkamah.
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> [p. 28 of Appeal Record]

[23] The knife and its sheath were produced at the trial marked P6A and P6B respectively. It was apparent that the knife, P6A matched some of the descriptions given by prosecution witnesses, SP2, SP3 and SP5. Though in her testimony SP2 referred to the weapon as knife and in her police report as parang, whereas SP5 and SP3 in their testimonies referred to as knife, it did not detract from the fact that the weapon was P6A. This was because ultimately SP2, SP3 and SP5 positively identified P6A as being the weapon used by the accused to threaten SP2. It is therefore, to some people, P6A is called interchangeably as parang or knife and to some others, it is called a knife. The knife and parang are weapons of the same genus. Both have blades. With the former, the blade is ordinarily narrow and small in size, whilst with the latter the blade is long and broad. The latter also has a holder which can be used to grip it firmly. In the course of this appeal,

I have the opportunity to view the photograph, P2 which clearly showed P6A and P6B. And to be honest with, I, myself am unsure what to call it. Given the choice, I would call it a rambo knife because its features are a fusion of a parang and a bigger version of a scout knife.

[24] For completeness of argument, assuming that the weapon is not recovered, it does not *ipso facto* detract from the finding of fact that the accused was wielding a weapon at close range and using it to threaten SP2. In *Sinnasamy Kaliappan*'s case, *supra*, Low Hop Bing J said:

> The absence of the parang does not *ipso facto* detract from the finding of fact that the accused was holding and using it to hit the metal gate of the house, thereby leaving undisputed and obvious telltale marks were corroborated by the direct oral evidence adduced through other prosecution witnesses under s. 60(1)(a) of the Evidence Act 1950.

[25] At the end of the day, the learned counsel's contention on the issue of parang or knife has no merit.

[26] The learned counsel also alleged that the learned magistrate had failed to consider the evidence which were favourable to the accused and also failed to take into account the contradiction of SP2's evidence which was given on oath and her police report, P3. (see para 3.2 of the memorandum of appeal). And further the learned counsel alleged that the learned magistrate had erred in law and in fact to convict and pass a sentence on the accused and to conclude that the prosecution had proved its case beyond reasonable doubt at the end of the defence case: (see para 3.1 of the memorandum of appeal).

[27] At the end of the defence case, the defence had not cast any reasonable doubt on the truth of the prosecution case. Therefore, the prosecution case remained strong and the prosecution had successfully proved its case beyond reasonable doubt. In this defence the accused's averments that SP2 had hit him on his head with an aluminium cake container and the allegation that the knife and its sheath, P6A and P6B were not taken into the house but always kept in the boot of his car and used for fishing, were not accepted by the learned magistrate. The learned magistrate was of the view that the accused averments in this respect was an afterthought as the prosecution witnesses, SP2, SP3 and SP5 were never asked or challenged about them when they gave evidence during the prosecution case.

[28] In this defence too, the accused sought to show the motive that SP2, SP3 and SP5 had conspired to fix or take revenge against him so that he would loose his job for marrying the second wife, SD2. There was not a slightest truth in the allegation. The learned magistrate put it in this way:

> Pihak pembelaan juga telah memanggil saksi pembelaan ke-2 (SD2) untuk membuktikan motif SP2 yang ingin membalas dendam dan mengenakan perayu sehingga dia hilang kerja. Walaupun isu motif ini dibangkitkan, tetapi mahkamah mendapati bahawa motif ini tidak memberi sebarang kesan untuk pihak pembelaan membuktikan bahawa wujudnya konpirasi, tuduhan palsu atau mereka-reka cerita dari pihak pendakwaan dan juga pengadu. Mahkamah juga telah melihat kredibiliti saksi-saksi pendakwaan dan kebolehpercayaan semasa memberi keterangan. Maka ini menunjukkan bahawa kes pendakwaan adalah kuat dan kukuh untuk menafikan niat jahat atau konspirasi SP2, SP3 dan SP5 untuk membuat tuduhan palsu.
>
> Maka, berdasarkan di atas alasan-alasan di atas mahkamah mendapati bahawa pihak pendakwa telah berjaya membuktikan kesnya melampaui keraguan munasabah dan pihak pendakwaan gagal untuk menimbulkan keraguan kepada kes pendakwaan.
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> [pp. 141 & 142 of Appeal Record].

[29] As stated above, the learned magistrate had seen prosecution witnesses while giving evidence. He found their evidence to be credible. They were witnesses of truth. The prosecution case was overwhelmingly strong and there was no evidence of bad faith or conspiracy among SP2, SP3 and SP5 to make false accusations against the accused. Bear in mind that SP5 is the accused's own biological daughter - his own flesh and blood. It was highly improbable for her to concoct the story. With the findings of facts based on credibility of witnesses, I, sitting in the appellate court, should be slow to interfere with such findings unless the findings are clearly wrong, which is not in this case.

[30] In the case of *Aparav Sathiah v. PP* [1997] 2 CLJ Supp 391 Abdul Wahab Patail J at p. 395 said:

> Generally, the decision as to the credibility of witness properly belongs to the trial judge. It is a matter of the trial judge's personal observation as the credibility of witness's testimony is not just a matter of clear unequivocal statements in evidence but also how fluently, willingly, unhesitatingly and candidly the witness answers questions. The appellate court, not having seen or heard

A such a witness, is at a disadvantage and, therefore, has to rely on the findings of the trial judge unless his conclusions are obviously against the weight of the evidence.

[31] In the Court of Appeal case of *The People's Insurance* B *Company (Malaysia) Bhd v. Ting Tiew Kiong* [2007] 5 CLJ 225 it was held:

> The settled principle of law is that, it is undesirable that the factual findings of the trial court be disturbed by the appellate court unless it appears that these findings are clearly wrong. And C it is even more undesirable to do so where the conclusion reached, to a large extent, depended on the credibility of the witnesses and the impression formed by the trial judge who has been them and judged their honesty and accuracy: (see Federal Court case of *China Airlines Ltd v. Maltran Air Corporation Sdn Bhd & Another Appeal* [1996] 3 CLJ 163). We adopt the same in D deciding this appeal.

[32] I wholeheartedly approach the same in the instant appeal.

[33] Now, I come to the question of sentence. Sentencing is a E matter of a trial court discretion. In order to interfere with the sentence imposed, the appellate court must be convinced that the trial judge or magistrate had erred in applying the correct principle of sentencing or had embarked on some unauthorized or extraneous exercise of discretion. In the Federal Court case of F *Bhandulananda Jayatilake v. PP* [1981] 1 LNS 139, Raja Azlan Shah, Ag LP (as His Highness was) said:

> Is the sentence harsh and manifestly excessive? We would paraphrase it in this way. As this is an appeal against the exercise by the learned judge of a discretion vested in him, is the sentence G so far outside the normal discretionary limits as to enable this court to say that its imposition must have involved an error of law of some description? I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon H which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may some times reach different conclusions (see *Jamieson v. Jamieson*). It is for the reason that some very conscientious I judges have thought it their duty to visit particular crimes with exemplary sentences, whilst others equally conscientious have thought it their duty to view the same crimes with leniency.

> Therefore sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again that it will not normally interfere with sentences and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, *per se*, to warrant this court's interference.
>
> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous or irrelevant exercise of discretion ...

[34] In the final analysis, I do not propose to disturb the decision made by the learned magistrate as I found that he did not transgress any established legal principles and guidelines which warrant my intervention, both on conviction and sentence. I hereby confirm the fine of RM7,000 in default six months imprisonment imposed by the learned magistrate.